

Chapter 80-5-4

Regulations Regarding the Sale of Insurance By Financial Institutions

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80-5-4-.01 Sale of Insurance by Financial Institutions; Definitions.

(1) Insurance may be sold by financial institutions in Georgia, subject to regulations of the Department of Banking and Finance, regulations of the Office of the Commissioner of Insurance and other applicable state law including but not limited to O.C.G.A. § 33-3-23. Sale of annuities by financial institutions is covered in Regulation Chapter 80-5-3. These regulations do not negate or affect the following: exceptions set out in O.C.G.A. §33-3-23 such as sale and underwriting of credit insurance (§ 33-3-23(b)); sale of products regulated by O.C.G.A. § 33-23-12(b)(3); and insurance sold pursuant to Insurance Regulation §120-2-11, all of which are otherwise regulated by the Office of the Commissioner of Insurance.

(2) Financial institutions may sell or market insurance through state licensed insurance agents. The agents may be either employees of the financial institution or independent agents who have contracted with the financial institution to sell insurance. Prior approval of the Department of Banking and Finance is not required for a financial institution to sell insurance, but policies and rules of the Department of Banking and Finance should be consulted.

(3) As used in this chapter, the term:

(a) "Agency" means a person, including corporations, subsidiary corporations, partnerships, non-natural persons, etc., associated with or in the form of a financial institution who represents one or more insurers and is engaged in the business of soliciting or procuring or accepting applications for insurance sales or countersigning, issuing, or delivering contracts of insurance for one or more insurers;

(b) "Agent" means an individual appointed or employed by an insurer who solicits or procures applications for insurance; who in any way, directly or indirectly, makes or causes to be made any insurance contract for or on account of an insurer; or who as a representative of an insurer receives money for transmission to the insurer for an insurance contract, anything in the application or contract to the contrary notwithstanding, and who has on file with the Commissioner of Insurance a certificate of authority from each insurer with whom the agent places insurance;

(c) "Financial institution" means a domestic state bank, national bank, building and loan or savings and loan association or other federally insured depository institution which is authorized to accept deposits in the state of Georgia; a bank holding company; or a subsidiary or affiliate of any of the above;

(d) "Insurance" means a contract which is an integral part of a plan for distributing individual losses whereby one undertakes to indemnify another or to pay a specified amount or benefits upon determinable contingencies. The term does not include credit insurance products referenced in O.C.G.A. § 33-23-12(b).

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(11).

80-5-4-.02 Notification of Intent to Sell Insurance; Registration of Bank Holding Company.

(1) A financial institution that wishes to sell insurance must give prior notification to the Office of the Commissioner of Insurance, with a copy of the notice and any subsequent amendments to the Department of Banking and Finance, attention: Corporate Division.

(2) Any financial institution with a holding company, not currently registered with the Department, which is marketing or selling insurance products in this state shall register said holding company with the Department of Banking and Finance.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(11).

80-5-4-.03 Licensure of Agents and Agency.

(1) A financial institution that intends to sell insurance either through an independent agent or through its own licensed employees shall be considered an Agency under Department of Insurance Regulation §120-2-3-.05 and must meet any requirements of that Regulation Chapter.

(2) Any individual who solicits, sells or markets insurance in association with a financial institution located in Georgia must be licensed as an insurance agent by the Office of Commissioner of Insurance.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(11).

80-5-4-.04 Agreement Between Independent Insurance Agent or Agency and Financial Institution.

(1) An arrangement for the sale of insurance between an independent insurance agent or agency and a financial institution must be governed by a written agreement approved by the financial institution's board of directors. Such agreements will not be required if the agent is an employee of the financial institution. Compliance with the agreement should be periodically monitored by the financial institution's senior management. The agreement must set forth the responsibilities of the parties, the terms and conditions of the arrangement, and the compensation to be received by the financial institution. The agreement must also, at a minimum, contain provisions which:

(a) Specify that each insurance agent will comply with all applicable laws and regulations;

(b) Authorize the financial institution, the Department of Banking and Finance, and the Department of Insurance to have access to the financial institution's premises where the insurance agent conducts insurance sales in order to inspect books and records and other relevant information maintained by the insurance agent with respect to such insurance sales and to perform related regulatory functions;

(c) Authorize the financial institution to monitor the insurance agent and periodically review and verify that the insurance agent or agency and its representatives are complying with the agreement with the financial institution and with state and other applicable law; and

(d) Require the insurance agent or agency contracting with the financial institution to indemnify the institution from any liability resulting from unlawful, wrongful, or improper actions or representations on the part of the insurance agent with regard to the sale of insurance in its association with the financial institution.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(11).

80-5-4-.05 Location of Sale of Insurance.

(1) When insurance agent services are provided on the premises of a financial institution, the insurance agent and the financial institution have a heightened responsibility to ensure appropriate measures are implemented to clearly segregate and distinguish the insurance agent services from retail deposit taking operations of the financial institution. Insurance agent services shall be conducted in a physical location distinct from the area where the financial institution's insured deposits are routinely taken.

(2) No insurance agent services shall be conducted from the teller area. The acceptance of mortgage payments which include insurance escrow payments will not be considered to be insurance agent services.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(11).

80-5-4-.06 Signage.

(1) Advertisements for insurance products physically located in financial institutions shall be subject to Department of Insurance law (O.C.G.A. § 33-6-1 et. seq.) and regulation and any applicable Department of Banking and Finance law and regulation.

(2) The insurance agent must display his/her name and status as a licensed agent in the area where insurance transactions occur.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(11).

80-5-4-.07 Advertisements.

(1) "Advertisement" for the purposes of these regulations shall mean, consistent with O.C.G.A. §33-6-1 et. seq. and related regulations of the Department of Insurance, any oral or written promotional or sales material which is directed to the public and concerns insurance products offered through an insurance agent in association with a financial institution.

(2) Such advertisement shall conform to all the applicable law and regulations of the Department of Insurance, in addition to the regulations herein.

(3) All advertisements sent to prospective customers shall clearly reflect the source of the communication. If the insurance agent is an employee of the financial institution, he/she shall be identified as representing both the financial institution and the insurer. If the insurance agent is an independent agent not employed by the financial institution, he/she must disclose that fact.

(4) No advertisement shall suggest or convey any inaccurate or misleading impression about the nature of the insurance product. Premiums shall not be referred to as deposits. Terminology used in connection with insurance products must be distinguishable from that used in connection with traditional banking products. All advertisements must disclose:

(a) The insurance product is not insured by the FDIC;

(b) The insurance product is not a deposit or other obligation of, and is not underwritten or guaranteed by, the financial institution; and

(c) The insurance product is not a condition to the provision or term of any banking service or activity.

(5) If the product or program name under which an insurance contract is marketed includes the name of a financial institution or the name of a program associated with the financial institution, the product or program name must also identify the insurance company which is issuing and underwriting the insurance contract.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(11).

80-5-4-.08 Disclosures.

(1) In order to determine what types of disclosures are required, banks must be diligent in their assessment of the nature of any nondeposit product. Products may take various forms: e.g., investment products such as mutual funds or annuities, and insurance products such as homeowners' insurance or life insurance. Hybrid products with features of more than one category will necessitate compliance with each category's requirements.

(2) Insurance Products. Many of the concerns about customer confusion in bank sales of investment products may also be present in bank sales of insurance products. Consequently, the disclosures required for sale of insurance will be similar to those required for sale of annuities and other investment products.

(a) At the time of sale of an insurance product, the written disclosure below or one which contains all its elements shall be made, except that if a financial institution does not take deposits and is not insured by the FDIC, (i) may be omitted.

The insurance products described or referred to:

(i) Are not deposits and are not insured by the FDIC;

(ii) Are not obligations of, underwritten or guaranteed by the financial institution selling the insurance product; and

(iii) Are not a condition to the provision or term of any banking service or activity.

(b) The disclosures given to the customer shall be conspicuous and presented in a clear and concise manner, with no qualifying remarks.

(c) The insurance agent shall deliver the written disclosure described in (a) to the customer and shall receive back from the customer a signed statement that the customer has read and understands the meaning of the disclosures. A copy of this signed statement shall be given to the customer and retained by the financial institution.

(d) In addition to paragraph (2) of this Rule, the insurance agent shall, during discussions of insurance products with the customer, make these disclosures orally.

(3) Annuity products. Disclosures are covered in Chapter 80-5-3 of the Department of Banking and Finance's regulations.

(4) Nondeposit Investment Products. If an insurance product contains investment features, compliance with federal law and policy, such as the Interagency Statement on Retail Sales of Nondeposit Investment Products including the disclosure requirements therein, where applicable, as well as with the Department of Banking and Finance's statement of policy for state chartered banks is required.

(5) Insurance agents shall identify themselves to the customer as being either employees of the financial institution or independent licensed insurance agents, as applicable. Business cards and stationery shall indicate the agent's status as a state licensed agent.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(11).

80-5-4-.09 Activities of Licensed Agents; Bank Personnel.

(1) Solicitation and sale of insurance products in association with a financial institution may be provided only by state licensed and regulated insurance agents. Unlicensed employees of the insurance agent or financial institution may, however, provide clerical or ministerial assistance. Unlicensed employees of the financial institution may refer customers of the financial institution interested in the purchase of insurance products to the appropriate agent in the financial institution or may inform the customer how to reach the agent.

(2) Except as permitted by these regulations, an unlicensed employee of the financial institution shall not discuss or promote insurance products or respond to questions about such products.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(11).

80-5-4-.10 Severability.

If any provision of the rules in this Chapter 80-5-4 or the application of them to any financial institution or circumstance is held invalid, such invalidity shall not affect the provisions or applications of the rules herein which can be given effect without the invalid portion. To that end, the provisions of these rules are declared to be severable.

Authority O.C.G.A. § 7-1-61; O.C.G.A. § 7-1-261(11).